

TITLE 23. WATERS
DIVISION 2. DEPARTMENT OF WATER RESOURCES

**NOTICE OF PROPOSED AMENDMENT OF REGULATIONS UNDER THE YUBA FEATHER
FLOOD PROTECTION PROGRAM OF THE SAFE DRINKING WATER, CLEAN WATER,
WATERSHED PROTECTION, AND FLOOD PROTECTION ACT**

NOTICE IS HEREBY GIVEN that the Department of Water Resources proposes to amend its regulations establishing a process for funding feasibility studies and designs under the Yuba Feather Flood Protection Program to include funding for implementation of projects. The regulations to be amended are entitled "Yuba Feather Flood Protection Program of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act" and are found in Title 23, California Code of Regulations, Division 2, Chapter 2.5.2, commencing with Section 499.1, effective February 25, 2003. The amendments are indicated by strikeout and underline in the proposed text of regulations and are available on request from the agency official designated in this notice. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the action at a hearing to be held at the following location on the following date:

July 24, 2006
10:00 a.m. to 12:00 p.m.
Department of Water Resources, Room LL50
3310 El Camino Avenue
Sacramento, California 95821.

Room LL50 is accessible to persons with disabilities and can be reached by taking the elevator to the basement. The nearest off-street parking is in front of the building.

Written comments may also be hand-delivered to the Department of Water Resources, Office of the Chief Counsel, Room 1118, Attention: Katherine A. Spanos, mailed to the Department, attention Katherine A. Spanos, at P.O. Box 942836, Sacramento, California 94235-0001; faxed to the Department, Attention Katherine A. Spanos, (916) 653-0952, or e-mailed to Katherine A. Spanos at kspanos@water.ca.gov. Such additional written comments will be received until 5 p.m. on July 24, 2006.

AUTHORITY AND REFERENCE

These regulations are authorized by Water Code Section 79068.20. The regulations implement, interpret and make specific Chapter 5, Article 8, commencing with Section 79068, of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000. Water Code Sections 8300, 12580 and 12609 give the Department general authority to participate in development of flood control projects.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Proposition 13, the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000, is a general obligation bond law passed by the voters of California in March 2000. The Flood Protection Program is contained in Chapter 5 of that Act; and Article 8 of Chapter 5, beginning at Water Code Section 79068, contains the Yuba Feather Flood Protection Program. The Act authorizes the issuance of \$1,970,000,000 in general obligation bonds, the proceeds of which are to be placed in an account created by the Act. Article 8 of Chapter 5 of the Act transfers \$90 million into a subaccount for purposes of implementing the Yuba Feather Flood Protection Program. \$70 million of that amount is for implementing flood protection projects along the Yuba and Feather Rivers, Colusa Basin Drain, and their tributaries, and \$20 million is to be used by the Department of Fish and Game for mitigation for flood protection projects funded by the program.

The proposed rulemaking would amend the existing regulations that set up a process for funding feasibility studies and designs for projects to be implemented under this program to include funding for implementation, would provide for allocation of implementation funds during design, would allow preparation for right of way acquisition using design funds, would establish means to credit the cost of qualified pre-grant work against grantee's implementation cost share, and would make related and other nonsubstantive changes. The existing regulations were adopted on February 25, 2003 to allow feasibility studies and designs of the projects to proceed immediately. This regulatory action will allow the agency to fund the project implementation stage of the program.

The proposed amendments repeal Section 499.6.2, Environmental Compliance, of the existing regulations and incorporate its provisions elsewhere; retain all other sections of the existing permanent regulations with amendments, and add new sections containing conditions for early allocation of implementation funds, advance preparation for right of way acquisition, a description of what implementation of a project will include, requirements for determining grant amounts, and requirements related to the contents of a design grant application.

FEDERAL CONFORMITY

The proposed regulations deal exclusively with relationships between state governments and local public entities, although actions of the local public entity involving the federal government are mentioned peripherally. There is no known existing comparable federal regulation or statute. DWR finds that these regulations have no conflict with or duplication of federal regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate On Local Agencies And School Districts: None

Cost or Savings to Any Local Agency or School District That is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

Other Nondiscretionary Cost Or Savings Imposed On Local Agencies: FEMA and flood insurance requirements may be reduced, resulting in a cost savings to local communities.

Costs Or Savings To Any State Agency: None

Cost Or Savings In Federal Funding To The State: There is the potential for this program to develop opportunities for federal cost-sharing on future flood control projects, resulting in an increase of federal funds appropriated to the State.

Significant Effect On Housing Cost: To the extent the program promotes projects to reduce flood risk, housing will be preserved that otherwise could be lost or uninhabitable following a high water event. The preservation of this housing stock will help maintain affordable housing.

Significant Statewide Adverse Economic Impact Directly Affecting Business Including The Ability Of California Businesses To Compete With Businesses In Other States: No adverse economic impact would result. There may be a potential economic benefit resulting from reduced flood risk, enhancing California businesses' ability to compete with businesses in other states.

Cost Impacts On a Representative Private Person Or Business: The regulations will not result in an adverse cost impact. The potential for reduced flood risk could result in reduced flood insurance requirements and enhanced business competitiveness.

Small Business Determination: The Department has determined that the proposed regulations may have an effect on small business. The grant program is voluntary and there may be a potential for benefit from the enforcement of the regulations to the extent that a grant recipient may hire a small business to perform part of the grant requirements. The express terms of the proposed action written in plain English are available from the agency contact person named in this Notice.

Assessment Regarding The Creation Or Elimination Of Jobs In California: The Department of Water Resources has determined that the adoption of these regulations will not: (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California. Results of reduced flood risk may enhance local business' economic viability.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the above-mentioned hearing or during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDED REGULATIONS

The Department of Water Resources has prepared an initial statement of reasons for the proposed amendments and has available all the information upon which the proposal is based. Copies of the exact language of the proposed amended regulations and the statement of reasons and other information, if any, may be obtained from the Department upon request from the contact person listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department of Water Resources may adopt the proposed regulations if they remain substantially the same as described in this notice. The Department of Water Resources may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least fifteen (15) days before the Department adopts the regulations as revised. A request for the modified text, if there is one, should be addressed to the agency official designated in this notice. The Department of Water Resources will accept comments on the modified regulations for 15 days after the date on which the text is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Department will prepare a final statement of reasons when all comments have been received and considered, prior to closing the rulemaking record. The statement will be posted on the Department of Water Resources Internet site (see below) and may also be obtained from the Department upon request from the contact person listed below.

CONTACT PERSON FOR FURTHER INFORMATION

Anyone wishing further information about the proposed amended regulations, the initial statement of reasons, the full text of the regulation language proposed to be adopted, or the information on which the proposal is based may contact Katherine A. Spanos in the Office of the Chief Counsel, Department of Water Resources, at (916) 653-6295. All of the above information is available for inspection and copying. The address for inquiries by mail is:

Department of Water Resources
Office of the Chief Counsel
Attention: Katherine A. Spanos
1416 Ninth Street, Room 1118
P.O. Box 942836
Sacramento, CA 94236-0001

Backup Contact Person:

Dan Yamanaka
Yuba Feather Flood Protection Program
Division of Flood Management
Department of Water Resources
Telephone No. (916) 574-0632
Fax No. (916) 574-0677
Email Address: dany@water.ca.gov

Anyone wishing to discuss or ask questions about the substance of the proposed regulations may contact:

Dan Yamanaka
Yuba Feather Flood Protection Program
Division of Flood Management
Department of Water Resources
Telephone No. (916) 574-0632
Fax No. (916) 574-0677
Email Address: dany@water.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the text of the proposed amendments in underline and strikeout format, and the Initial Statement of Reasons can be accessed through DWR's Division of Flood Management's website at <http://www.dfm.water.ca.gov>.